



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

HAND DELIVERY

SEP 9 2005

John J. Duffy, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington DC 20036-1795

RE: MUR 5430 (Buchanan for President, Inc.
and Angela M. "Bay" Buchanan, in her
official capacity as treasurer)

Dear Mr. Duffy:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on March 9 and 23, 2004, the Federal Election Commission found reason to believe that your clients, Buchanan for President, Inc. and Angela M. "Bay" Buchanan, in her official capacity as treasurer, ("Respondents"), violated 2 U.S.C. §§ 432(h), 434(b), and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that knowing and willful violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief that you may submit will be considered by the Commission before proceeding to a vote on whether there is probable cause to believe a violation has occurred.

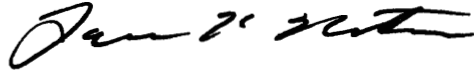
If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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John J. Duffy, Esq.
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Should you have any questions, please contact Mark Goodin, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence H. Norton".

Lawrence H. Norton
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 5430

Buchanan for President, Inc. and Angela M.
 "Bay" Buchanan, in her official capacity
 as treasurer

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On March 9 and March 23, 2004, based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found reason to believe that Buchanan for President, Inc. and Angela M. "Bay" Buchanan, in her official capacity as treasurer ("BFP" or "Respondents"), violated 2 U.S.C. §§ 432(h), 434(b), and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").¹ Based on its investigation, the Commission concluded that BFP knowingly and willfully violated the Act.

BFP, which was the principal campaign committee of Patrick J. Buchanan (the "Candidate") for the Republican nomination for President in 1996, accepted contributions to an account that it had established in March 2001 (the "Buchanan Fund"), but BFP failed to designate a depository that maintained the Buchanan Fund, failed to report the Buchanan Fund activity, and accepted contributions in excess of limits established by the Act. BFP used the Buchanan Fund to pay debts and winding down costs of the Candidate's 1996 campaign. BFP's conduct with respect to the Buchanan Fund is similar to that for which the Commission had

¹ All of the facts recounted herein occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

1 admonished Ms. Buchanan in her role as treasurer of a previous committee of the Candidate.
2 Furthermore, BFP has failed to substantiate its claim that the Buchanan Fund was established
3 based on the advice of counsel. Based on a review of the circumstances surrounding these
4 violations, the General Counsel is prepared to recommend that the Commission find probable
5 cause to believe that Buchanan for President, Inc. and Angela M. "Bay" Buchanan, in her official
6 capacity as treasurer, knowingly and willfully violated 2 U.S.C. §§ 432(h), 434(b), and 441a(f).

7 **II. ANALYSIS**

8 **A. Factual Background**

9 Pursuant to 26 U.S.C. § 9038, the Commission audited Buchanan Reform, Inc. (the "BRI
10 Committee"), which was the principal campaign committee of Mr. Buchanan for the Reform
11 Party's nomination for President in 2000. During the audit fieldwork, the Audit staff discovered
12 an account entitled the "Buchanan Fund," which was the subject of an enforcement referral to
13 this Office.²

14 The Buchanan Fund was opened on March 5, 2001. Ms. Buchanan described the
15 Buchanan Fund as a "contingency fund" to be used for disbursements that she believed were not
16 covered under federal law. Deposition of Angela M. "Bay" Buchanan ("Buchanan Dep.") at
17 27:13-14. A solicitation letter from the BRI Committee signed by Ms. Buchanan stated that the
18 Buchanan Fund would "be used to pay campaign related expenses, which do not require 'federal'
19 dollars for payment." In that same letter, Ms. Buchanan stated that she established the Buchanan
20 Fund "with the advice of counsel." However, Respondents have not provided any information
21 that substantiates the "advice of counsel" upon which Ms. Buchanan claims to have relied.

² Although the audit related to the 2000 election cycle, the Buchanan Fund activities related to the winding down of the Candidate's 1996 election campaign.

1 Neither the BRI Committee nor BFP designated the depository that maintained the Buchanan
2 Fund or reported the Buchanan Fund activity.

3 During 2001, the receipts into the Buchanan Fund totaled \$53,859 and disbursements
4 totaled \$48,551.³ The receipts came from either: (1) individuals who had made excessive
5 contributions to the BRI Committee, received refund checks from the BRI Committee⁴ and
6 endorsed them to the Buchanan Fund (\$8,219); or (2) donors who made direct contributions to
7 the Buchanan Fund (\$45,520).⁵

8 Of the \$53,859 in Buchanan Fund receipts, \$35,393 constituted contributions in excess of
9 limits established by the Act. Because the Buchanan Fund was an account of BFP (as discussed
10 below), BFP received these excessive contributions. Furthermore, at BFP's request, some
11 recipients of BRI Committee excess contribution refund checks endorsed and sent them to BFP
12 (rather than the Buchanan Fund). As a result, BFP received another \$14,483 into its designated
13 accounts. BFP therefore received a total of \$49,876 in excessive contributions.

14 Among its disbursements during 2001, the Buchanan Fund paid \$27,431 to the United
15 States Treasury on behalf of BFP.⁶ In addition, the Buchanan Fund disbursed \$3,000 to a law
16 firm in settlement of invoices for legal services performed for BFP. *See Buchanan Dep. at 90:15*
17 *through 100:10 and Buchanan Dep. Ex. 21.*

18

³ The Buchanan Fund remained open in 2002, but contained minimal funds. Its closing cash balance for 2001 was \$5,308. Statements from the first quarter of 2002 revealed deposits of \$1,609; disbursements of \$4,045; and a cash balance on March 29, 2002, of \$2,872.

⁴ The total amount of refunds from the BRI Committee to contributors for excessive contributions was \$214,583.

⁵ The Buchanan Fund also earned \$120 in interest in 2001.

⁶ BFP owed the United States Treasury money in connection with MUR 5192. The conciliation agreement in MUR 5192 obligated BFP to pay the Treasury as a result of the existence of "stale-dated committee checks." *See* 11 C.F.R. § 9038.6.

B. BFP Failed to Report and Designate a Depository

A political committee must deposit all receipts into a checking account at a designated campaign depository, and it must make all disbursements (in excess of \$100) by checks or similar drafts drawn on accounts at such a depository. 2 U.S.C. § 432(h); *see also* 11 C.F.R. § 103.3(a). Furthermore, a political committee must notify the Commission of all of its designated depositories. 11 C.F.R. § 103.1. In addition, a political committee is required to report certain information, including the amount of cash on hand at the beginning of each reporting period, the total amount of receipts and disbursements for the reporting period and calendar year, and the identity of certain contributors. 2 U.S.C. § 434(b).

Because BFP used the Buchanan Fund to pay debts and winding down costs of the Candidate's 1996 campaign, the Buchanan Fund is considered a campaign depository of BFP. *See FEC v. Ted Haley Cong. Comm.*, 852 F.2d 1111, 1115 (9th Cir. 1988) (post-election donations to retire campaign debt are for the purpose of influencing and are in connection with that election). As described above, out of \$48,551 in disbursements from the Buchanan Fund in 2001, more than \$30,000 went to payments to the United States Treasury for stale-dated checks from the 1996 campaign, or for legal fees in connection with that campaign.⁷ Moreover, the solicitation form letter from Ms. Buchanan requests that contributors who received refunds from

⁷ The receipts and disbursements of the Buchanan Fund do not fall under any of the categories of exemptions from the definitions of "contribution" and "expenditure." 11 C.F.R. §§ 100.7(b) and 100.8(b). (As of November 6, 2002, these regulations have been reorganized at 11 C.F.R. §§ 100.71 – 100.92 and §§ 100.130 – 100.154.) *See also* 2 U.S.C. §§ 431(8)(A)(i) (definition of "contribution") and 431(9)(A)(i) (definition of "expenditure"). The Buchanan Fund could not qualify as a civil and criminal penalty account (the receipts or disbursements of which would not be "contributions" or "expenditures"), because it did not limit its disbursements to the payment of civil and criminal penalties. *See* 11 C.F.R. § 9034.4(b)(4). Moreover, the Buchanan Fund could not qualify as a "legal defense fund" (which would not be subject to the prohibitions and limitations of the Act) because the account's funds were not used exclusively for defraying legal costs. *See, e.g.*, AO 2003-15.

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1 the BRI Committee for excessive contributions endorse their refund checks to the "Buchanan
2 Fund" because the FEC "is now only finalizing its audit of Pat's 1996 campaign." Therefore, the
3 Buchanan Fund account's receipts and disbursements appear to relate almost entirely to
4 Mr. Buchanan's 1996 presidential primary election campaign.

5 BFP has not designated a depository containing the Buchanan Fund. Its most recent
6 amended Statement of Organization (dated November 9, 1999) lists nine "Banks or Other
7 Depositories," none of which is the bank (First Union National Bank) at which the Buchanan
8 Fund is maintained. BFP also has failed to report the Buchanan Fund's activity. Consequently,
9 there is probable cause to believe that Buchanan for President, Inc. and Angela M. "Bay"
10 Buchanan, in her official capacity as treasurer, violated 2 U.S.C. §§ 432(h) and 434(b). As
11 explained below, in section II.D., there is probable cause to believe that these violations were
12 knowing and willful.

13 **C. BFP Accepted Excessive Contributions**

14 At the time of the Buchanan Fund's activity, the Act prohibited any candidate and his
15 authorized committees from accepting in excess of \$1,000 from any individual with respect to
16 any election for federal office. 2 U.S.C. §§ 441a(f) and 441a(a)(1)(A). The Buchanan Fund's
17 receipt and disbursement activity related to the 1996 election. *See* AO 1989-22 (contributions
18 solicited to pay debts remaining from previous election must comply with limits applied to that
19 election); *Haley*, 852 F.2d at 1115 (post-election donation to retire campaign debt is subject to
20 contribution limitations with respect to that election). Therefore, individual contributions to the
21 Buchanan Fund, when aggregated with other contributions to Buchanan and his authorized
22 committees for the 1996 election cycle (namely, BFP), were limited to \$1,000. *See* 2 U.S.C.

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1 § 441a(a)(1)(A). Whether through BRI Committee excessive contribution refund checks
2 endorsed to the Buchanan Fund, or direct individual contribution checks to the Buchanan Fund,
3 BFP received \$35,393 in excessive contributions that it deposited in the Buchanan Fund.

4 Separately, Ms. Buchanan also asked some of the recipients of BRI Committee excessive
5 contribution refund checks to endorse the checks to BFP. As a result, BFP received into its
6 designated accounts an additional \$14,483 in excessive contributions.

7 Consequently, there is probable cause to believe that Buchanan for President, Inc. and
8 Angela M. "Bay" Buchanan, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f).

9 With respect to the excessive contributions to the Buchanan Fund, as discussed below in section
10 II.D., there is probable cause to believe that such violations were knowing and willful.

11 **D. There is Probable Cause to Believe that BFP Knowingly and Willfully Violated**
12 **the Act**

13
14 The phrase "knowing and willful" indicates that "acts were committed with a knowledge
15 of all the relevant facts and a recognition that the action is prohibited by law...." H.R. Rpt. 94-
16 917 at 3-4 (Mar. 17, 1976) (*reprinted in* Legislative History of Federal Election Campaign Act
17 Amendments of 1976 at 803-4 (Aug. 1977)); *see also National Right to Work Comm. v. FEC*,
18 716 F.2d 1401, 1403 (D.C. Cir. 1983) (*citing AFL-CIO v. FEC*, 628 F.2d 97, 98, 101 (D.C. Cir.
19 1980) for the proposition that "knowing and willful" means "'defiance' or 'knowing, conscious,
20 and deliberate flaunting' [sic] of the Act"); *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th
21 Cir. 1990). In addition, the *Hopkins* court held that taking steps to disguise the source of funds
22 used in illegal activities may reasonably be explained as a "motivation to evade lawful
23 obligations." *Hopkins*, 916 F.2d at 213-14 (*citing Ingram v. United States*, 360 U.S. 672, 679
24 (1959)) (internal quotations omitted). Several factors indicate BFP's "defiance"—or recognition

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1 that its actions were prohibited—including its treasurer's unsubstantiated claim that the
2 Buchanan Fund was established with advice of counsel, her previous admonishment from the
3 Commission, and her understanding of the Act.

4 In a letter soliciting donations to the Buchanan Fund, Ms. Buchanan stated that she
5 established the Buchanan Fund "with the advice of counsel." She has failed at her deposition or
6 otherwise, however, to substantiate this advice of counsel that she claims to have received.
7 Based on her inability to support her claim that the account was legally sanctioned, we infer that
8 she recognized that the establishment of and deposit of excess contributions into the Buchanan
9 Fund violated the Act, and that she asserted reliance on legal advice in order to encourage
10 unlimited donations to an unreported account.

11 Moreover, Ms. Buchanan was specifically admonished in a previous matter for conduct
12 similar to the conduct at issue here. In MUR 4918, BFP asked its excess contribution refund
13 recipients to endorse their refund checks to a "Compliance Fund," which BFP claimed was not
14 subject to the Act. In the resolution of MUR 4918, the Commission sent an admonishment letter
15 to Bay Buchanan, as treasurer of "Buchanan Compliance Fund '92." This letter explained why
16 the funds at issue were "contributions" under the Act, noted that the committee apparently
17 received excessive contributions, and stated that she "should take steps to ensure that this activity
18 does not occur in the future." See Letter from Scott E. Thomas to Angela M. "Bay" Buchanan in
19 MUR 4918 (Aug. 30, 1999). This admonishment letter alerted Ms. Buchanan of an apparent
20 section 441a(f) violation (excessive contributions) arising out of the committee's operation of an
21 account into which excessive contributions were deposited, a violation that is at issue in the
22 present matter (in addition to violations under sections 432(h) (depository designation) and
23 434(b) (reporting)). Therefore, the Commission's disposition of MUR 4918 specifically notified

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1 the treasurer of BFP that the committee's failure to treat certain accounts in compliance with the
2 Act could result in a violation.

3 Finally, Ms. Buchanan's solicitation letter for the Buchanan Fund noted that donations to
4 it would "be used to pay campaign related expenses," and she conceded that the purpose of the
5 Buchanan Fund was to obtain money from those contributors who had reached their contribution
6 limits for the BFP campaign. See Buchanan Dep. at 23:16-19 and 25:9 through 26:12. Although
7 she was aware of the mandate to disclose financial transactions of political committees and to
8 abide by the Act's contribution limitations—having done so for a number of previous
9 committees⁸—she failed to do so here, even for admitted "campaign related expenses."

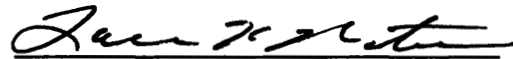
10 The BFP treasurer's misleading and unsubstantiated assertions that the Buchanan Fund
11 activity was legal, her previous admonishment for similar conduct, as well as her recognition of
12 the Act's limitations and reporting requirements, indicate that Respondents acted in "defiance"
13 of the Act, *National Right to Work Comm.*, 716 F.2d at 1403, and that they acted to "evade
14 lawful obligations." *Hopkins*, 916 F.2d at 213-14. Based on these circumstances, this Office is
15 prepared to recommend that there is probable cause to believe that Buchanan for President, Inc.
16 and Angela M. "Bay" Buchanan, in her official capacity as treasurer, knowingly and willfully
17 violated 2 U.S.C. §§ 432(h), 434(b), and 441a(f) with respect to the operation of the Buchanan
18 Fund.

⁸ For example, Ms. Buchanan served as treasurer of Ronald Reagan's presidential campaigns in 1980 and 1984. Statements of Organization of Reagan for President General Election Comm. (May 29, 1980) and Reagan-Bush '84 (June 18, 1984).

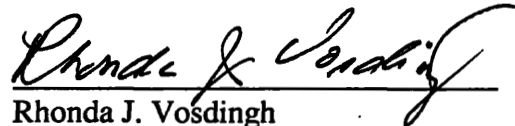
1 **III. GENERAL COUNSEL'S RECOMMENDATIONS**

- 2 1. Find probable cause to believe that Buchanan for President, Inc. and Angela M.
3 "Bay" Buchanan, in her official capacity as treasurer, violated 2 U.S.C. §§ 432(h),
4 434(b), and 441a(f).
5
6 2. Find probable cause to believe that Buchanan for President, Inc. and Angela M.
7 "Bay" Buchanan, in her official capacity as treasurer, knowingly and willfully
8 violated 2 U.S.C. §§ 432(h), 434(b), and 441a(f) with respect to the Buchanan Fund.
9


10
11
12
13 7/8/05
14 Date



Lawrence H. Norton
General Counsel



Rhonda J. Vosdigh
Associate General Counsel for Enforcement



Jonathan A. Bernstein
Assistant General Counsel



Mark A. Goodin
Attorney

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